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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

**SAN JOSE DIVISION**

FINJAN, INC., a Delaware Corporation,

Plaintiff,

v.

CISCO SYSTEMS, INC., a California  
Corporation,

Defendant.

Case No.: 5:17-cv-00072-BLF-SVK

**CISCO SYSTEMS, INC.'S  
ADMINISTRATIVE MOTION TO FILE  
UNDER SEAL**

Judge: Hon. Beth Labson Freeman  
Courtroom: 3, 5<sup>th</sup> Floor

# I. INTRODUCTION

Pursuant to Civil L.R. 7-11 and 79-5, this Court's Standing Civil Order Re: Civil Cases, and the Parties Stipulated Protective Order (Dkt. 97), Defendant Cisco Systems, Inc. ("Cisco") hereby moves the Court for leave to file under seal, pursuant to Civil L.R. 79-5(d), the items identified in the table below:

ECF or Exh. No.	Document	Portion(s) to Seal	Reason(s) for Sealing
	Cisco Systems, Inc.'s Motion to Strike Previously Undisclosed Damages Theories in Expert Reports of Dr. Anne Layne-Farrar and Dr. Ricardo Valerdi ("Cisco's Motion").	Highlighted portions at pg. 1 at lines 25-27; pg. 2 at lines 1-6; pg. 2 at lines 18-21; pg. 3 at lines 11-12; pg. 3 at lines 19-20; pg. 3 at lines 22-23; pg. 3 at line 25; pg. 4 at line 1; pg. 4 at lines 3-4; pg. 4 at lines 6-11; pg. 4 at line 14; pg. 4 at lines 17-24; pg. 5 at lines 1-9; pg. 5 at lines 11-24; pg. 7 at line 1; pg. 7 at line 9; pg. 7 at lines 13-16; pg. 7 at lines 18-23; pg. 7 at line 28; pg. 8 at lines 1-6; pg. 8 at line 8; pg. 8 at lines 12-15; pg. 8 at line 17; pg. 8 at lines 22-23; pg. 8 at lines 26-27; pg. 9 at lines 10-13; pg. 9 at line 24; pg. 10 at lines 9-11.	Contains summaries of and quotations from documents designated in their entirety by Finjan as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant to the terms of the Stipulated Protective Order. See Declaration of D. Stuart Bartow ("Bartow Decl") at at pgs. 1-2, ¶ 3.  Contains confidential information pursuant to the Protective Order entered in this action. If filed publicly, this confidential information could be used to Cisco's disadvantage by competitors, as it reveals Cisco's confidential business and financial information related to the accused products. <i>Id.</i>

ECF or Exh. No.	Document	Portion(s) to Seal	Reason(s) for Sealing
Ex. B	Exhibit B to the Declaration of Jennifer H. Forte in Support of Cisco Systems, Inc.'s Motion to Strike Previously Undisclosed Damages Theories in Expert Reports of Dr. Anne Layne-Farrar and Dr. Ricardo Valerdi	Entire document	<p>This document was designated in its entirety by Finjan as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant to the terms of the Stipulated Protective Order. See Bartow Decl at pg. 2, ¶ 3.</p> <p>In addition, this document contains Cisco confidential information pursuant to the Protective Order entered in this action. If filed publicly, this confidential information could be used to Cisco's disadvantage by competitors, as it reveals Cisco's confidential sales and financial information and confidential deposition testimony related to same. <i>Id.</i></p>
Ex. C	Exhibit C to the Declaration of Jennifer H. Forte in Support of Cisco Systems, Inc.'s Motion to Strike Previously Undisclosed Damages Theories in Expert Reports of Dr. Anne Layne-Farrar and Dr. Ricardo Valerdi	Highlighted portions at pg. 6, at lines 25-27	This information is of unknown origin and has not been published. It potentially reflects or may lead to the disclosure of Cisco's confidential information.
Ex. D	Exhibit D to the Declaration of Jennifer H. Forte in Support of Cisco Systems, Inc.'s Motion to Strike Previously Undisclosed Damages Theories in Expert Reports of	Entire document	This document was designated in its entirety by Finjan, Inc. as "HIGHLY CONFIDENTIAL – ATTORNEYS'

ECF or Exh. No.	Document	Portion(s) to Seal	Reason(s) for Sealing
	Dr. Anne Layne-Farrar and Dr. Ricardo Valerdi		EYES ONLY” pursuant to the terms of the Stipulated Protective Order. See Bartow Decl at pgs. 2-3, ¶ 3.
Ex. E	Exhibit E to the Declaration of Jennifer H. Forte in Support of Cisco Systems, Inc.’s Motion to Strike Previously Undisclosed Damages Theories in Expert Reports of Dr. Anne Layne-Farrar and Dr. Ricardo Valerdi	Entire document	This document was designated in its entirety by Finjan, Inc. as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to the terms of the Stipulated Protective Order. See Bartow Decl at pg. 3, ¶ 3.
Ex. G	Exhibit G to the Declaration of Jennifer H. Forte in Support of Cisco Systems, Inc.’s Motion to Strike Previously Undisclosed Damages Theories in Expert Reports of Dr. Anne Layne-Farrar and Dr. Ricardo Valerdi	Entire document	This document was designated in its entirety by Finjan, Inc. as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to the terms of the Stipulated Protective Order. See Bartow Decl at pg. 3, ¶ 3.  In addition, this document contains Cisco confidential information pursuant to the Protective Order entered in this action. If filed publicly, this confidential information could be used to Cisco’s disadvantage by competitors, as it reveals certain details related to Cisco’s proprietary source code. <i>Id.</i>

ECF or Exh. No.	Document	Portion(s) to Seal	Reason(s) for Sealing
Ex. H	Exhibit H to the Declaration of Jennifer H. Forte in Support of Cisco Systems, Inc.'s Motion to Strike Previously Undisclosed Damages Theories in Expert Reports of Dr. Anne Layne-Farrar and Dr. Ricardo Valerdi	Entire document	<p>This document includes summaries of and substantive responses to information contained in a document designated in its entirety by Finjan, Inc. as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant to the terms of the Stipulated Protective Order. See Bartow Decl at pgs. 3-4, ¶ 3.</p> <p>In addition, this document contains Cisco confidential information pursuant to the Protective Order entered in this action. If filed publicly, this confidential information could be used to Cisco's disadvantage by competitors, as it reveals confidential information related to the sale of Cisco's products. <i>Id.</i></p>
Ex. I	Exhibit I to the Declaration of Jennifer H. Forte in Support of Cisco Systems, Inc.'s Motion to Strike Previously Undisclosed Damages Theories in Expert Reports of Dr. Anne Layne-Farrar and Dr. Ricardo Valerdi	Entire document	<p>This document includes summaries of and substantive responses to information contained in a document designated in its entirety by Finjan, Inc. as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"</p>

ECF or Exh. No.	Document	Portion(s) to Seal	Reason(s) for Sealing
			<p>pursuant to the terms of the Stipulated Protective Order. See Bartow Decl at pgs. 4-5, ¶ 3.</p> <p>In addition, this document contains Cisco confidential information pursuant to the Protective Order entered in this action. If filed publicly, this confidential information could be used to Cisco's disadvantage by competitors, as it reveals confidential information related to the sale of Cisco's products. <i>Id.</i></p>

## II. ARGUMENT

### A. Legal Standard

There is a presumption of public access to judicial records and documents. *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978). However, records attached to non-dispositive motions, such is the case here, are not subject to the strong presumption of access. *Finjan, Inc. v. Proofpoint, Inc.*, No. 13-CV-05808-HSG, 2015 WL 9023164, at \*1 (N.D. Cal. Dec. 16, 2015) (internal citation omitted). Because the documents attached to non-dispositive motions “are often unrelated, or only tangentially related, to the underlying cause of action,” parties moving to seal must meet the lower “good cause” standard of the Federal Rules of Civil Procedure Rule 26(c). *Id.* (internal quotation marks omitted). The “good cause” standard requires a “particularized showing” that “specific prejudice or harm will result” if the information is disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002) (internal quotation marks omitted); see Fed.

R. Civ. P. 26(c). “Broad allegations of harm, unsubstantiated by specific examples of articulated reasoning” will not suffice. *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992). Sealing is appropriate where the requesting party “establishes that the document, or portions thereof is privileged or protectable as a trade secret or otherwise entitled to protection under the law.” N.D. Cal. Civ. L.R. 79–5(a). A party must “narrowly tailor” its request to sealable material only. *Id.*

**B. Cisco’s Administrative Motion to Seal Is Supported By Good Cause and Is Narrowly Tailored**

As noted in the table above, Cisco seeks to seal select portions of Cisco Systems, Inc.’s Motion to Strike Previously Undisclosed Damages Theories in Expert Reports of Dr. Anne Layne-Farrar and Dr. Ricardo Valerdi (“Cisco’s Motion”), pg. 1 at lines 25-27; pg. 2 at lines 1-6; pg. 2 at lines 18-21; pg. 3 at lines 11-12; pg. 3 at lines 19-20; pg. 3 at lines 22-23; pg. 3 at line 25; pg. 4 at line 1; pg. 4 at lines 3-4; pg. 4 at lines 6-11; pg. 4 at line 14; pg. 4 at lines 17-24; pg. 5 at lines 1-9; pg. 5 at lines 11-24; pg. 7 at line 1; pg. 7 at line 9; pg. 7 at lines 13-16; pg. 7 at lines 18-23; pg. 7 at line 28; pg. 8 at lines 1-6; pg. 8 at line 8; pg. 8 at lines 12-15; pg. 8 at line 17; pg. 8 at lines 22-23; pg. 8 at lines 26-27; pg. 9 at lines 10-13; pg. 9 at line 24; pg. 10 at lines 9-11, select portions of Exhibit C, and the entirety of Exhibits B, and D-I to the Declaration of Jennifer H. Forte In Support of Cisco’s Motion.

These select portions quote from materials that were either designated in their entirety by Plaintiff Finjan as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or reflect information from which confidential and proprietary financial information of Cisco could be ascertained. *See* Declaration of D. Stuart Bartow in Support of Administrative Motion to File Documents Under Seal (“Bartow Declaration”), ¶¶ 3-4. Public disclosure of this information could cause irreparable harm. *See also Andrx Pharms., LLC v. GlaxoSmithKline*, 236 F.R.D. 583, 586 (S.D. Fla. 2006) (“Courts dress technical information with a heavy cloak of judicial protection because of the threat of serious economic injury to the disclosure of scientific information.”); *Network Appliance, Inc. v. Sun Microsystems, Inc.*, 2010 WL 841274, at \*5 (N.D. Cal. Mar. 10, 2010) (granting application to seal “information regarding NetApp’s internal usability testing of its software”).

Cisco's administrative motion is narrowly tailored and only seeks to seal the select portions of Cisco's Motion and associated exhibits that materials that were either designated in their entirety by Plaintiff Finjan as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or reflect information from which confidential and proprietary financial information of Cisco could be ascertained. *See Kowalsky v. Hewlett-Packard Co.*, 2012 WL 892427, \*2 (N.D. Cal. Mar. 14, 2012) (finding sealing appropriate where "[t]he proposed redactions contain[ed] . . . confidential product development information, the disclosure of which could harm [the defendant's] competitive advantage in the marketplace.").

### III. CONCLUSION

For these reasons, Cisco respectfully requests that the Court grant its Administrative Motion to Seal.

Dated: August 21, 2019

Respectfully submitted,

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